IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos. 291/1997 to 295/1997, 297/1997 and 298/1997

STATE OF GUJARAT

Versus

LAXMANBHAI PANCHABHAI

Appearance:

Shri P.G.Desai for the State in First Appeal Nos.291/ to 293/97.

Shri S.P.Dave for the State in First Appeal Nos.294/97 and 295/97.

Shri L.R.Pujari for the State in First Appeal Nos.297/97 and 298/97.

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/06/98

ORAL ORDER

These are appeals filed by the State of Gujarat under Sec.54 of the Land Acquisition Act read with Sec.96 of Civil Procedure Code challenging the impugned common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

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#. The lands were acquired for the Nyari-II Irrigation Project. The notification under Sec.4 was published on 15th March, 1984. After the requisite formalities, the Special Land Acquisition Officer declared his award under Sec.11 determining the market value of the acquired land at Rs.175/- per Are for Bhagayat and Rs.115/- per Are for Jirayat lands.

The landholders-claimants not having accepted the award preferred their references under Sec.18 of the said Act, which were heard and decided by the Reference Court under the impugned judgment. The Reference Court awarded a uniform price without making any distinction between

the Bhagayat and Jirayat lands by accepting the evidence on record to the effect that all the lands under acquisition were of equivalent and uniform fertility. However, the Reference Court did make a differentiation between the area of lands acquired from the holdings of different claimants by making a deduction in principal in respect of small plots qua larger area acquired. Thus, the Reference Court determined the market value with the maximum rate of Rs.395/- per Are, and then allotted progressively smaller valuation to other plots which were larger in area.

#. The learned counsel for the appellant has sought to raise a question of limitation, which has been decided by the Reference Court against the appellant on both facts and law. We will not however, deal with the approach of the Reference Court, so far as the application of the correct law to the question of limitation under Sec.18(2) of the said Act is concerned, in detail. The approach is totally erroneous and cannot be sustained. The Supreme Court has by now decided in a number of cases that the notice served on a landholder under Sec.12(2) of the Said Act, need not be accompanied by a copy of the award. Thus, any plea raised by a landholder that he was not aware of the contents of the award because he was served merely with a bare intimation of the making of the award under Sec.12(2), and that, therefore, he was required to obtain a certified copy, and that the time required for obtaining a certified copy should be excluded from the period of limitation, is not a contention which can be sustained in law. This position is amply clear from the decisions of the Supreme Court in the case of Poshetty Vs. State of Andhra Pradesh reported in 1995(11) SCC page 213 and also in the case of State of Punjab Vs. Satinder Virsingh reported in 1995(3) SCC page 330. Thus, the approach of the Reference Court on this question of law is not sustainable.

3.1 However, that will not change or affect the situation and the ultimate conclusion arrived at by the Reference Court in view of the factual situation on record. It was the appellant State which raised the contention before the Reference Court that the references under Sec.18 were time barred, and thus, the burden of proof of establishing all necessary facts was upon the State. As we find from the record, the appellant State has not led any evidence whatsoever to establish, firstly, whether the notices under Sec.12(2) were issued at all, and assuming for the sake of argument that they were issued, what was the date of service upon the

landholders. Furthermore, there is no evidence on record as to the actual date of filing of the landholder's application for making the reference under Sec.18, that is to say, the date of lodgment of the application before the Land Acquisition Officer. Thus, in the total absence of appropriate evidence it cannot possibly be held that the reference applications were beyond limitation.

#. The next contention raised is as regards the determination of market value on the part of Reference Court. The Reference Court has to a substantial extent relied upon a document of sale at exh.18, relied upon by the claimants landholders. This Sale Deed is dated 22nd of October, 1981 that is to say approximately two and half years prior to the date of Sec.4 notification which is dated 15th March, 1984. This Sale Deed represents the sale of land situated in the very same Village, and also in the proximity of the acquired land. It reflects a sale price at Rs.395/- per Are. One contention levelled against exh.18 by the learned counsel for the appellant is that although the document has been exhibited, the contents thereof have not been proved and therefore, the sale price reflected in the said document cannot afford a comparable sale instance or any guideline for determination of the market value of the acquired land. Firstly, this contention is to be seen in juxtaposition with other Sale Deeds which have been brought on record by the opponent State itself, namely exhs.37 to 39. The trial Court has rightly refused to rely upon exhs.37 to 39 on the ground that the person who has purchased the same was the mere Junior Clerk in the office of Deputy Collector, and admittedly had no personal knowledge either about the document and or about the transaction in question. However, this is neither here nor there and is not determinative of the issue. We only note that the Reference Court has merely referred to exh.18 as a corroborative piece of evidence and has taken note of the sale price reflected in the document only by way of a guideline. Thus, the technical contention that the said document could not have been looked into at all, even if upheld, would not improve the case of the appellant any further.

4.1 Having examined the impugned judgment with the assistance of learned counsel for the appellant in considerable detail, we find that the Reference Court has placed substantial reliance upon exh.50, which is another award of the Reference Court under Sec.18 of the said Act, pertaining to acquisition of lands acquired for the very same purpose, and located in the very same Village. The Reference Court has discussed the contents of the

said award at exh.50 in considerable detail and has approved of and adopted the logic had reasoning in the said award, so far as gradation and classification of the lands. In our opinion, this classification and gradation is justified looking to the principle behind the same, namely that smaller plots can be regarded to be higher in value than the larger plots. This basic principle has been recognized as a principle of law since long. The only aspect which requires to be noted is that even under the said award exh.50 and so also under the impugned judgment, the maximum rate awarded to any of the acquired lands is Rs.395/- per Are, and depending on the gradation and classification of larger plots, the market value has been progressively determined at lower figures. In view of this approach adopted by the Reference Court, learned counsel for the appellant could not and did not contend that exh.50 could not relied upon.

#. No other contentions are raised.

#. In the premises aforesaid, there is no substance in these appeals and the same are, therefore, dismissed.

(Y.B.Bhatt,J.)

(R.P.Dholakia,J.)

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